

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EDGAR ACENCIO,

Petitioner,

- against -

HAROLD MCKINNEY,

Respondent.

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GARAUFIS, United States District Judge.

MEMORANDUM & ORDER
05-CV-1026 (NGG)

Edgar Acencio (“Petitioner”) filed this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, alleging that he received ineffective assistance of counsel because his trial counsel (1) failed to elicit helpful evidence during trial, (2) failed to request certain jury instructions, (3) failed to object when the court did not issue an alibi charge, (4) failed to request an intoxication instruction, (5) failed to move for severance, (6) failed to adequately execute a defense of misidentification, and (7) delivered a summation that was improper and failed to address evidence to the Petitioner.

I referred the petition to the Honorable Cheryl L. Pollak, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). In response, Judge Pollak recommended that I deny the petition in its entirety. (Report and Recommendation dated June 13, 2007 at 33.)

No party has filed an objection to Judge Pollak’s Report and Recommendation. The ten-day period for doing so has expired. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b). However, “[e]ven if neither party objects to the magistrate’s recommendation, the district judge is not

bound by the recommendation of the magistrate. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. . . . [T]he phrase de novo *determination* in section 636(b)(1) . . . was selected by Congress to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings and recommendations." 892 F. 2d 16, 19 (2d. Cir. 1989) (citations and quotation marks omitted) (emphasis in original).

I have reviewed Judge Pollak's thorough and well-reasoned Report and Recommendation. I find, on the face of the record and pursuant to my "broad latitude [under Section 636(b)(1)] in considering the magistrate's recommendation," *id.*, that the Report and Recommendation is correct. I therefore order that the Report and Recommendation of Judge Pollak dated June 13, 2007 is approved, adopted, and ratified in its entirety by this court. Edgar Acencio's petition for a writ of habeas corpus is therefore DENIED.

SO ORDERED.

Date: July 20, 2007
Brooklyn, New York

/s/ Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge